

2005 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB100)

Received: 06/21/2005

Received By: **btradewe**

Wanted: **Today**

Identical to LRB:

For: **James Kreuser (608) 266-5504**

By/Representing: **Lisa**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kreuser@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Recreate office of the public intervenor

Instructions:

Like 2003 AB 46, provide funding and positions by reducing PSC

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	btradewe 06/21/2005	wjackson 06/21/2005	jfrantze 06/21/2005	_____	mbarman 06/21/2005	mbarman 06/21/2005	

FE Sent For:

<END>

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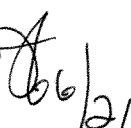
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/1	btradewe	/1 WJ 6/21		_____	_____		

FE Sent For:

<END>

2003 ASSEMBLY BILL 46

February 13, 2003 - Introduced by Representatives BLACK, BOYLE, SHERMAN, BERCEAU, CULLEN, SINICKI, MILLER, YOUNG, TURNER, HUBER, BALOW, POPE-ROBERTS, PLOUFF, KRUG, LASSA, TRAVIS, RICHARDS, POCAN, COGGS, SHILLING and J. LEHMAN, cosponsored by Senators WIRCH, CARPENTER, RISSER, DECKER, HANSEN, CHVALA, ERPENBACH and M. MEYER. Referred to Committee on Natural Resources.

1 AN ACT *to amend* 814.245 (2) (d); and *to create* 18.13 (4g), 165.07, 165.075 and
2 165.076 of the statutes; **relating to:** creating an Office of Public Intervenor in
3 the Department of Justice.

Analysis by the Legislative Reference Bureau

This bill recreates an Office of Public Intervenor attached to the Department of Justice (DOJ), with the same duties and authority that existed before 1995 Wisconsin Act 27. That act transferred the Office of Public Intervenor from DOJ to the Department of Natural Resources (DNR), eliminated the public intervenor's authority to formally commence or intervene in lawsuits, and substituted an eight-member board (consisting of four members nominated by the governor and approved by the senate and four members each appointed by the majority and minority leaders of the senate and assembly) for the seven-to-nine-member advisory committee (consisting of members appointed by the attorney general). The Office of Public Intervenor and its board were eliminated by 1997 Wisconsin Act 27.

The bill requires the attorney general to appoint an assistant attorney general to serve as the public intervenor. The bill authorizes the public intervenor to do all of the following:

1. Formally commence or intervene in proceedings before any court whenever such intervention is necessary to protect the public rights in water and other natural resources of this state, and requires the public intervenor to intervene in such matters when requested to do so by a division administrator in DNR.

ASSEMBLY BILL 46

2. Act as an interested party in actions in which he or she intervenes, with full power to present evidence, subpoena witnesses, cross-examine witnesses, file briefs, and do any other acts appropriate for a party to the proceedings.

3. Appeal administrative rulings to the courts.

The bill requires DNR personnel to notify the public intervenor of all administrative proceedings under the environmental protection chapters and to make such investigations, studies, and reports to assist the public intervenor either before or during such formal intervention.

The bill also requires the attorney general to appoint a Public Intervenor Advisory Council consisting of seven to nine members who have a background in or demonstrated experience or records relating to environmental protection or natural resource conservation. In addition, at least one member must have working knowledge of business and at least one member must have knowledge of agriculture. The advisory committee must hold open, publicized meetings and must advise the public intervenor consistent with his or her duties.

The bill authorizes 2.0 attorney positions in DOJ for the purposes of the public intervenor.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 18.13 (4g) of the statutes is created to read:

2 18.13 (4g) PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public
3 intervenor does not have authority to initiate any action or proceeding concerning
4 the issuance of obligations by the building commission under this chapter.

5 **SECTION 2.** 165.07 of the statutes is created to read:

6 **165.07 Assistant attorney general — public intervenor.** (1) The attorney
7 general shall designate an assistant attorney general on the attorney general's staff
8 as public intervenor. The head of each agency responsible for proceedings under chs.
9 30, 31, 281 to 285, and 289 to 299, except s. 281.48, shall give notice of those
10 proceedings to the public intervenor, to the administrators of divisions primarily
11 assigned the departmental functions under chs. 29, 281, 285, and 289 to 299, except
12 s. 281.48, and to the natural areas preservation council.

ASSEMBLY BILL 46

1 (2) The public intervenor shall formally intervene in proceedings described in
2 sub. (1) when requested to do so by an administrator of a division primarily assigned
3 the departmental functions under chs. 29, 281, 285, or 289 to 299, except s. 281.48.
4 The public intervenor may, on the public intervenor's own initiative or upon request
5 of any committee of the legislature, formally intervene in proceedings described in
6 sub. (1) whenever that intervention is needed for the protection of public rights in
7 water and other natural resources, as provided in chs. 30 and 31 and defined by the
8 supreme court.

9 (3) Personnel of the department of natural resources shall, upon the request
10 of the public intervenor, make such investigations, studies, and reports as the public
11 intervenor may request in connection with proceedings described in sub. (1), either
12 before or after formal intervention. Personnel of state agencies shall, at the public
13 intervenor's request, provide information, serve as witnesses in proceedings
14 described in sub. (1), and otherwise cooperate in the carrying out of the public
15 intervenor's intervention functions. The public intervenor shall formally intervene
16 by filing a statement to that effect with the examiner or other person immediately
17 in charge of the proceeding. Upon that filing, the public intervenor shall be
18 considered a party in interest with full power to present evidence, subpoena and
19 cross-examine witnesses, submit proof, file briefs, or do any other acts appropriate
20 for a party to the proceedings.

21 (4) The public intervenor may appeal from administrative rulings to the courts.
22 In all administrative proceedings and judicial review proceedings, the public
23 intervenor shall be identified as "public intervenor." This section does not preclude
24 or prevent any division of the department of natural resources, or any other

ASSEMBLY BILL 46

1 department or independent agency, from appearing by its staff as a party in any
2 proceedings.

3 **SECTION 3.** 165.075 of the statutes is created to read:

4 **165.075 Assistant attorney general; public intervenor; authority.** In
5 carrying out his or her duty to protect public rights in water and other natural
6 resources, the public intervenor has the authority to initiate actions and proceedings
7 before any agency or court in order to raise issues, including issues concerning
8 constitutionality, present evidence and testimony, and make arguments.

9 **SECTION 4.** 165.076 of the statutes is created to read:

10 **165.076 Assistant attorney general; public intervenor; advisory**
11 **committee.** The attorney general shall appoint a public intervenor advisory
12 committee under s. 15.04 (1) (c). The public intervenor advisory committee shall
13 consist of not less than 7 nor more than 9 members. The attorney general may only
14 appoint members who have backgrounds in or demonstrated experience or records
15 relating to environmental protection or natural resource conservation. The attorney
16 general shall appoint at least one member who has working knowledge in business
17 and at least one member who has working knowledge in agriculture. The public
18 intervenor advisory committee shall advise the public intervenor consistent with his
19 or her duty to protect public rights in water and other natural resources. The public
20 intervenor advisory committee shall conduct meetings consistent with subch. V of
21 ch. 19 and shall permit public participation and public comment on public intervenor
22 activities.

23 **SECTION 5.** 814.245 (2) (d) of the statutes is amended to read:

24 814.245 (2) (d) "State agency" does not include the public intervenor or citizens
25 utility board.

Fiscal Estimate - 2003 Session

Original Updated Corrected Supplemental

LRB Number 03-0869/1	Introduction Number AB-46
Subject Reestablish public intervenor	
Fiscal Effect	
State:	
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs	
Local:	
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
Fund Sources Affected Affected Ch. 20 Appropriations	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
Agency/Prepared By DOJ/ Vaughn Vance (608) 264-9463	Authorized Signature Vaughn Vance (608) 264-9463
Date 4/17/2003	

Fiscal Estimate Narratives

DOJ 4/17/2003

LRB Number 03-0869/1	Introduction Number AB-46	Estimate Type Original
Subject Reestablish public intervenor		

Assumptions Used in Arriving at Fiscal Estimate

This legislation recreates the Office of Public Intervenor within the Department of Justice. The duties and authority of this office are the same as those that existed prior to 1995 Wisconsin Act 27 which eliminated the office and its board. Under the proposal, the Office of Public Intervenor would intervene, in certain circumstances affecting the environment and public water rights, in both administrative and court proceedings.

The bill, as drafted, increases the Department's Attorney position authority by 2.0 FTE Attorney positions, but provides no increase in appropriations to fund them.

The Department estimates that an annual increase of \$241,400 will be required to fund 2.0 FTE Attorney positions to restore the Office of Public Intervenor. Additional support staff may be required, but are not included in this estimate.

With some statutory changes to this bill providing DOJ with cost recovery authority, the Department anticipates that restoration of the Office of Public Intervenor could be accomplished without requiring any additional GPR spending.

Long-Range Fiscal Implications



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBb0574/1

RCT:.....

WJ

ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 100

Today
please

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 48, line 23: after that line insert:

3 2. Page 185, line 3: increase the dollar amount for fiscal year 2005-06 by
4 \$241,400 and increase the dollar amount for fiscal year 2006-07 by \$241,400 for the
5 purpose of increasing the authorized positions for the department of justice by 2.0
6 FTE attorney positions for the public intervenor.

7 3. Page 82, line 8: decrease the dollar amount for fiscal year 2005-06 by
8 \$241,400 and decrease the dollar amount for fiscal year 2006-07 by \$241,400 for the
9 purpose of decreasing the authorized authorized positions for the public service
10 commission by 2.0 attorney positions.

11 4. Page 817, line 21: after that line insert:

12 5. Page 911, line 8: after that line insert:

move

Insert C ✓

1 **6.** Page 1024, line 12: after that line insert:

2 ^K
(1) APPROPRIATION LAPSE. Notwithstanding section 20.001 (3) (c) of the
3 statutes, there is lapsed from the appropriation account under section 20.155 (1) (g) ✓
4 of the statutes \$241,000 in fiscal year 2005-06 and \$241,000 in fiscal year 2006-07. ✓
5

(END)

ASSEMBLY BILL 205

make investigations, studies, and reports to assist the public intervenor either before or during such formal intervention.

The bill also requires the attorney general to appoint a Public Intervenor Advisory Council consisting of seven to nine members who have a background in or demonstrated experience or records relating to environmental protection or natural resource conservation. In addition, at least one member must have working knowledge of business and at least one member must have knowledge of agriculture. The advisory committee must hold open, publicized meetings and must advise the public intervenor consistent with his or her duties.

The bill authorizes 2.0 attorney positions in DOJ for the purposes of the public intervenor.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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18.13 (4g) PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public intervenor does not have authority to initiate any action or proceeding concerning the issuance of obligations by the building commission under this chapter. ✓

✓ SECTION 2. 165.07 of the statutes is created to read:

165.07 Assistant attorney general — public intervenor. (1) The attorney general shall designate an assistant attorney general on the attorney general's staff as public intervenor. The head of each agency responsible for proceedings under chs. 30, 31, 281 to 285, and 289 to 299, except s. 281.48, shall give notice of those proceedings to the public intervenor, to the administrators of divisions primarily assigned the departmental functions under chs. 29, 281, 285, and 289 to 299, except s. 281.48, and to the natural areas preservation council.

(2) The public intervenor shall formally intervene in proceedings described in sub. (1) when requested to do so by an administrator of a division primarily assigned the departmental functions under chs. 29, 281, 285, or 289 to 299, except s. 281.48.



Insert
2A

Insert
B

114e

2082p

ASSEMBLY BILL 205

1 The public intervenor may, on the public intervenor's own initiative or upon request
2 of any committee of the legislature, formally intervene in proceedings described in
3 sub. (1) whenever that intervention is needed for the protection of public rights in
4 water and other natural resources, as provided in chs. 30 and 31 and defined by the
5 supreme court.

6 (3) Personnel of the department of natural resources shall, upon the request
7 of the public intervenor, make such investigations, studies, and reports as the public
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↓

ASSEMBLY BILL 205

SECTION 3

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6 ^{Ⓟ2062r}
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 16 or her duty to protect public rights in water and other natural resources. The public
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 18 ch. 19 and shall permit public participation and public comment on public intervenor
 19 activities. ✓Ⓟ

20 ^{Ⓟ2448e}
~~SECTION 5~~ 814.245 (2) (d) of the statutes is amended to read:

Insert
C

21 814.245 (2) (d) "State agency" does not include the public intervenor or citizens
 22 utility board. ✓Ⓟ

23 ~~SECTION 6. Nonstatutory provisions.~~